IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

WP(C).No. 34523 of 2006(I)

PETITIONER:

SUNIL KUMAR, S/O.DIVAKARAN,
AGED 34, JAYA BHAVAN, CHEPPARA, KOTTARAKKARA,
KOLLAM.

BY ADV. SRI.V.S.BABU GIREESAN

RESPONDENTS:
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1. THE PRINCIPLE SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT (C) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. SUDHAKARAN, JOINT DIRECTOR OF PANCHAYAT,
DIRECTORATE OF PANCHAYATH, THIRUVANANTHAPURAM.

3. BALACHANDRAN, SUPERINTENDENT OF POLICE,
CRIME BRANCH, CID, SIG-I, THIRUVANANTHAPURAM.

4. GRACE JULIET MENDES,
THE SECRETARY, VELINALLOOR GRAMA PANCHAYAT,
KOTTARAKKARA, KOLLAM.

***5. THE VELINALLOOR GRAMA PANCHAYATH,**
KOTTARAKKARA, KOLLAM.
REP. BY ITS SECRETARY.

***ADDL. R5 IS IMPLEADED AS PER ORDER DATED 05/01/2007 IN WPC.**

****6. SAINUDEEN M.,**
KAVERI MANZION,
PONGANADU P.O.,
KULIMANOOR,
PIN- 695 001.

****ADDL. R6 IS IMPLEADED AS PER ORDER DATED 15/02/2007 IN IA NO. 2438/07.**

#7. V.J. JOSEPH, PANICKER BHAVAN,
PULAMON P.O., KOTTARAKKARA.

8. MOLY JOSEPH, VITHAYATHIL
PUNALUR, KOLLAM DIST.

#ADDL. R7 AND R8 ARE IMPLEADED AS PER ORDER DATED 15/02/2007 IN IA NO. 2443/2007.

BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)
SRI.K.G.RENGANATH
GOVERNMENT PLEADER SMT. T.B. RAMANI
SRI.BINDU SREEKUMAR --R4
SRI.PIRAPPANCODE V.SREEDHARAN NAIR --R6, R7 AND R8
SRI.PIRAPPANCODE V.S.SUDHIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 34523/2006 I

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE POWER OF ATTORNEY DT. 6/12/2006.

EXT.P2(1). COPY OF THE TAX RECEIPT.

EXT.P2(2). COPY OF THE POSSESSION CERTIFICATE.

EXT.P2(3). COPY OF THE DEALERS LICENCE ISSUED BY MINING AND GEOLOGY.

EXT.P2(4). COPY OF THE CONSENT RENEWAL ORDER OF POLLUTION CONTROL BOARD.

EXT.P2(5). COPY OF THE NOC OF THE FIRE FORCE.

EXT.P2(6). COPY OF THE CERTIFICATE ISSUED BY THE DISTS. MEDICAL OFFICER.

EXT.P3. COPY OF THE RESOLUTION DT. 17/11/2006 OF VELINALLOR PANCHAYATH.

EXT.P4. COPY OF THE PROCEEDINGS OF THE R4 DT. 18/11/2006.

EXT.P5. COPY OF THE ORDER BY THE R1 6/12/2006.

EXT.P6. COPY OF THE ASSESSMENT IN THE NAME OF HEMA V. KUMAR BY R5 PANCHAYAT RELATED TO THE BUILDING VP V/528A FOR THE YEAR 2002-05.

EXT.P7. COPY OF THE SALE DEED DT. 5/1/2001.

EXT.P8. COPY OF THE JUDGMENT DT. 27/1/2007 IN CMP NO. 8/07 OF THE KOTTARAKKARA SUB COURT.

RESPONDENT'S EXHIBITS

EXT.R5-A. COPY OF THE RESOLUTION NO. II DT. 15/1/07 OF VELINALLOOR GRAMA PANCHAYATH.

EXT.R5A. COPY OF THE RECEIPT NO. K.R. /F/NO. A 256 DT. 24/6/2003 FOR AN AMOUNT OF RS. 90,000/-

EXT.R5B. COPY OF THE RECEIPT NO. KR/F/ NO. 5076 DT. 2/6/2003 FOR AN AMOUNT OF RS. 11 LAKHS DEPOSITED THE ADDL. R6.

EXT.R7A. COPY OF THE ORDER DT. 21/12/2006 BY COURT BELOW IN IA NO. 3583/2006 IN OS NO. 487/2006 OF THE MUNSIFF COURT, KOTTARAKKARA.

True copy

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PIUS C. KURIAKOSE, J.

W.P.(C) No. 34523 OF 2006

Dated this the 26th day of March, 2007

JUDGMENT

Even though there is considerable force in the submissions of Mr.U.N. Achuthakurup, Senior Counsel and those of Sri.Pirappancode V. Sreedharan Nair, counsel for the party respondents, in the light of the facts which have been unfurled in this case, that this Court will not be justified in invoking its discretionary jurisdiction in favour of the petitioner. I feel that for the short reason that Ext.P5 order of the Government has been passed without notice to the petitioner and hence violative of the rule of audi alteram partem, the petitioner should be afforded an opportunity for hearing. But at the same time I agree that Sri. Achuthakurup, Senior Counsel is certainly right in submitting that mere quashment of Ext.P5 order will not be a good reason for the petitioner to obtain licence from Panchayat since Ext.R5(a) order is not yet to be challenged by the petitioner.

2. Ext.P5 order has been passed by the Government relying mainly on the report submitted by the 3rd respondent who investigated into certain offences allegedly committed by the husband of Smt.Hema V. Kumar and also by Smt.Hema V. Kumar herself represented in this proceeding by the writ petitioner. Under Ext.P5, the Government

instructs the Secretaries of the 4th respondent-Panchayat and Elamad Panchayat where Smt.Hema V. Kumar and her husband were conducting another crusher unit, to stop the functioning of those metal crusher units and also to take necessary action to stop the transfer of ownership of the units in question. Obviously, the order restraining transfer of ownership has been passed by the Government in the interest of the complainants who had complained to the police that money belonging to them had been defalcated by Smt.Hema V. Kumar and her husband who were doing finance business. Therefore even as I am inclined to quash Ext.P5 on the ground that the same has been passed without notice to Smt.Hema V. Kumar, there will a be a direction that Smt.Hema V. Kumar will not be entitled to transfer any of the properties standing in her name till the Government takes a final decision. Ext.R5(a), as rightly submitted by the learned Senior Counsel for the Panchayat, is yet to be challenged by the petitioner. The petitioner is permitted to challenge Ext.R5(a) in appropriate proceedings within a period of one month from today.

3. Under these circumstances, the Writ Petition will stand disposed of without going into the merits of the other grounds raised and the rival contentions taken, issuing the following directions:

Ext.P5 is quashed on the ground that it is violative of the

principles of natural justice and the Government is directed to take fresh decision on the issue with notice to the 3rd respondent investigating officer, the Secretaries of the Velinalloor Grama Panchayat and Elamad Panchayat and also to respondents 6 & 7. Government will take fresh decision as directed above within three months of receiving copy of this judgment. It is made clear that I have not expressed any opinion on the merits. I am in agreement with the submission of Sri.Achuthakurup that it was absolutely unnecessary on the part of the petitioner to have arrayed the Secretaries of the Panchayats eo-nomine as parties in this Writ Petition nevertheless I refrain from awarding costs to them by the petitioner. But the petitioner will have to convince the Government that he holds a duly executed power of attorney from Smt.Hema V. Kumar, before the Government allows him to represent her.

PIUS C. KURIAKOSE, JUDGE

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